

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 ROTH,

6 Plaintiff(s),

7 v.

8 BASF CONSTRUCTION CHEMICALS, LLC,
9 et al.,

10 Defendant(s).

NO. C07-106MJP

ORDER CLARIFYING MINUTE
ORDER OF MAY 23, 2008 (DKT. NO.
170)

11 The above-entitled Court, having received and reviewed:

- 12 1. Plaintiff Roth's Motion to Clarify May 23, 2008 Minute Order (Dkt. No. 279)
- 13 2. Defendant BASF Construction Chemicals, LLC, Brief in Response to Plaintiff Roth's Motion
14 to Clarify May 23, 2008 Minute Order (Dkt. No. 282)
- 15 3. Plaintiff Roth's Reply on Motion to Clarify May 23, 2008 Minute Order (Dkt. No. 285)

16 and all exhibits and declarations attached thereto, makes the following ruling:

17 IT IS ORDERED that Plaintiff's motion is GRANTED, and the Court clarifies the May 23,
18 2008 minute order (Dkt. No. 170) as follows:

- 19 1. In keeping with the request which the Court granted, Plaintiff is permitted to substitute
20 Defendant BASF Construction Chemicals, LLC, for Defendant BASF Corporation.
- 21 2. The Court finds that the amendment satisfies the requirements of FRCP 15(c), and therefore
22 Plaintiff's amendment shall be deemed to relate back to the previous (Second Amended) complaint
23 naming Defendant BASF Corporation.
- 24
- 25

1 **Discussion**

2 Defendant BASF Construction Chemicals, LLC (BASF CC) makes a single argument in
3 response to Plaintiff's request for clarification of the May 23, 2008 minute order granting him leave to
4 amend his complaint "for good cause shown" (Dkt. No. 170, p. 1): namely, that because Plaintiff's
5 original Third Amended Complaint was struck on August 5, 2008 (Dkt. No. 268) and Defendant
6 BASF Corporation (BASF Corp.) was dismissed as a party on August 8, 2008 (Dkt. No. 271), there
7 was no party to the action for which BASF CC could be substituted.

8 Defendant is correct that the first attempt at a Third Amended Complaint filed by Plaintiff was
9 stricken by this Court. Plaintiff had inexplicably attempted to add as first-party defendants, not only
10 BASF CC, but two third-party defendants (RHI Holdings, Inc. and The Fairchild Corporation) for
11 which he had neither requested nor been granted leave to amend. But the following day, Plaintiff filed
12 an *amended* Third Amended Complaint (Dkt. No. 269) naming only BASF CC as a party defendant.
13 It was two days after the filing of this (Court-approved) pleading that the order dismissing BASF
14 Corp. was entered. By that time, BASF CC had been effectively substituted in as a defendant in this
15 matter.

16 The Court's original order also did not address Plaintiff's request for a finding that the
17 substitution of BASF CC "related back" to the pleading which originally named BASF Corp., and the
18 Court corrects that oversight in this order. Noting the BASF CC makes no argument that the
19 substitution should not relate back, the Court finds that the amendment satisfies the requirements of
20 FRCP 15(c) in so much as:

21 1. BASF does not controvert Plaintiff's assertion that BASF Corp. was served within 120
22 days of the filing of the Second Amended Complaint naming them as defendants (as required by FRCP
23 4(m));

1 2. The claims against BASF CC unquestionably arise out of “the same conduct, transaction or
2 occurrence set forth” in the Second Amended Complaint; and

3 3. BASF CC does not controvert Plaintiff’s claims that it was aware of the institution of this
4 action, that it would not be prejudiced by its inclusion in this litigation or that it knew or should have
5 known that (but for a mistake on Plaintiff’s part) it would have been previously named as a party
6 defendant.


7 The Court finds the requirements of FRCP 15(c) satisfied.

8 **Conclusion**

9 The Court clarifies its Minute Order of May 23, 2008 by ordering that BASF Construction
10 Chemicals, LLC be substituted as a party defendant for BASF Corporation, and finds that the
11 amendment relates back to the original complaint naming BASF Corporation as a defendant.

12
13 The clerk is directed to provide copies of this order to all counsel of record.

14 Dated: October __29__, 2008

15
16 
17 Marsha J. Pechman
18 U.S. District Judge
19
20
21
22
23
24
25